

The FEC and Congress Respond to *Citizens United*

March 2010

On January 21, 2010, the United States Supreme Court ruled in *Citizens United v. Federal Election Commission* that corporations and unions have the right to engage in independent political speech, such as advertisements that expressly advocate the election or defeat of federal candidates. In response, the Federal Election Commission (FEC) announced that it will not enforce the statutory and regulatory provisions banning corporations and labor unions from making independent expenditures or electioneering communications.

The FEC also advised that corporations and labor unions financing independent expenditures or electioneering communications should include required disclaimers in the communications and disclose independent expenditures and electioneering communications on FEC Form 5 and FEC Form 9, respectively.

Congress separately has reacted to the *Citizens United* decision. Among others, Senator Charles Schumer (D-NY) and Representative Chris Van Hollen (D-MD) are working together on legislation that they hope Congress can pass quickly. While their legislation has yet to be introduced in either chamber, the publicly available framework shows that the legislation seeks to, among other things:

- Prohibit U.S. subsidiaries of foreign companies from spending money on America elections;
- Prohibit the same activity by corporations with foreign nationals holding 20% of their shares or for which a majority of the board of directors is foreign principals;
- Require corporate chief executive officers to appear in television advertisements to approve the message;
- Mandate that an organization's advertisements list the top five political contributors to the organization;
- Require organizations to establish separate, new political accounts and require that the names of donors to these accounts, as well as expenditures, be reported to the FEC;
- Ban government contractors and Troubled Asset Relief Program recipients from making independent expenditures;
- Require notice to shareholders of any political expenditure within 24 hours;
- Mandate lowest unit rates for candidates and political parties when corporations run advertisements on broadcast, cable, and satellite television; and

- Extend time periods in which corporations and unions may not coordinate with candidates about advertisements.

In addition to the potential Schumer-Van Hollen legislation, other members of Congress have introduced legislation and even constitutional amendments. Following the *Citizens United* decision, Senator Chris Dodd (D-CT) and Senator Tom Udall (D-NM) have sponsored a constitutional amendment authorizing the Congress, as well as the states, to regulate contributions and expenditures in campaigns. Although introduced before the *Citizens United* decision, a bill to provide for the public funding of congressional campaigns has been put forward in the House and Senate-the Fair Elections Now Act. The Senate version has 10 sponsors and co-sponsors; the House version has 140 sponsors and co-sponsors.